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CAC REPORT:

TRANSFER TO AT&T COMCAST

June 11, 2002

INTRODUCTION

This Report is intended to apprise the Westford Board of Selectmen (BoS) and other concerned parties regarding the ramifications of the proceedings of the Hearing convened on 4/10/02 concerning **Change of Control** of the Cable Television Renewal License (the "Renewal License") currently held by **AT&T Cable Services Corporation (CSC), Inc., as the Licensee,** to **AT&T Comcast (ATTC) Corporation.** The Transferee, ATTC, is the post-merger entity resulting from the proposed merger of our Licensee's parent company **AT&T Broadband (ATTb)** with **Comcast Corporation.** This merger is nonetheless a Change of Control from AT&T Broadband to ATTC, thus necessitating this Transfer process.

This Report is meant to help guide the BoS in rendering its official decision to approve or deny the **FCC Form 394** Application (License Transfer Request) filed with the Town on 3/1/02. As **Issuing Authority** of the Renewal License, the Westford BoS must transmit its decision to the **Cable Division** of the state Department of Telecommunications and Energy (DTE) on or before the statutory **6/30/02 deadline.** If the BoS do not make a decision on the transfer by the 6/30/02 deadline, the transfer request is deemed to be approved by such non-action.

Pursuant to proper public notice, the Transfer Hearing took place in the 1st Floor Meeting Room at the J. V. Fletcher Library and was cablecast live on Westford Community TV Channel 8 and taped for later rebroadcast. This Public Hearing was officially conducted by Selectmen Bob Jefferies and Chris Romeo, accompanied by members of the Cable Advisory Committee (CAC), headed by Co-Chairmen Dave Levy and Don Whitehouse. Special Counsel for Cable Matters, Peter Epstein, Esq. also attended on behalf of the Town. ATTC was represented by Jeffrey Fialky (ATTb Senior Operations Counsel), and Rob Travers (Manager of Government Affairs, ATTb Northeast Region). Apart from the videotape of the Hearing, a notarized stenographic transcript was later provided to the BoS by ATTb to serve as the official meeting record. The

Hearing proceedings were held open until 4/24/02, for the purpose of obtaining additional testimony by concerned parties, some of which has been quoted here.

The remainder of this Report will present: relevant **excerpts** from the Hearing proceedings and follow-up responses; a summary of **conclusions** to be drawn from the proceedings; the range of **options** in the BoS decision process; and lastly, the official **recommendations** of the CAC in this matter.

HEARING HIGHLIGHTS

A. ATTC Informational Presentation for Local Franchise Authorities

Early in the course of the Hearing, the ATTC spokespersons handed out an Informational Presentation (briefing charts) to the audience to help frame the discussion as follows:

- **The structure of the merger** – How ATTC will be created to serve as the new “parent company” to the current holders of all ATTb and Comcast cable franchises
- **The local franchise authority Consent process** – A description of the specific statutory criteria for adjudicating Consent to the Change of Control, i.e., assessment of the legal ability, financial capability, management experience and technical expertise of ATTC to assume the obligations of the current franchise holder
- **Benefits of the merger** – A description of how the merger will “accelerate” the rollout of new broadband services to the customer base, ostensibly because the new entity will have “deeper pockets” for investment in new infrastructure and can benefit from improved economies of scale. The commitment to provide free broadband Internet access to all schools and libraries in built-out areas was specifically emphasized, in the context of ATTb and Comcast’s combined 2002 broadband upgrade expenditures totaling more than \$2B.

B. Questions & Answers

After the Presentation was completed, the floor was opened to Town Officials to bring their concerns and questions to the attention of those representing the interests of ATTC at the Hearing. A selected subset of a list of questions prepared by Special Counsel Epstein provided the initial basis for discussion. Although verbal responses were made to those questions specifically posed at the Hearing, ATTb et al later provided a formal written reply to the entire list of questions. The issues reflected in the most relevant dialog that took place in the Q&A session are summarized as follows:

- **The basis of the merger** – Although it has been touted as a “marriage of equals” to leverage improved “scope and scale”, it was pointed out that it was really the end product

of a hostile takeover bid by Comcast for ATTb, owing to financial weakness and operational difficulties of the latter company in the telecomm recession environment.

- **Uncertain management structure of ATTC** – There is a great deal of uncertainty in the Transfer decision process due to ramifications of the fact that the Transferee (ATTC) cannot actually operate until the merger is consummated (after achieving regulatory approval). Those Selectmen who were present at the hearing both took exception to allegations by the ATTb officials at the hearing that the “management experience” of the Transferee is clearly acceptable, merely because the local management team will ostensibly not change after the merger. Controversy arises since the composition of the twelve-member Board of Directors of the new entity is unknown, except for Comcast CEO Brian Roberts, his brother, Chairman Ralph Roberts, and AT&T Chairman C. Michael Armstrong. Whether or not local management stays the same (and this is by no means assured), the flow-down of management decisions from the highest corporate levels of the new entity may have a great impact on local operations. This impact is uncertain until the entire Board of Directors has been fleshed out, so that high level corporate policy may be adequately scrutinized. To this end, Selectman Jefferies requested that the resumes of all ATTC Directors be provided to help assess the Transfer Consent criterion of management experience. Unfortunately, ATTb et al were unable to comply with this very specific request, instead merely forwarding resumes for Brian and Ralph Roberts and Chairman Armstrong.
- **Uncertainty regarding Broadband Services** – As mentioned in the proceedings, the unfulfilled promises made by ATTb at the 8/00 Regional License Transfer Hearings still continue to prompt angry Westford residents to submit Broadband Now! petitions (more than 300 filed to date). In this context, vague assurances that the Change of Control will speed up the long overdue broadband buildout that will enable the rollout of advanced Broadband Services in Westford ring hollow and cast doubt on ATTC’s ability to meet the criteria that form the basis of the Transfer Consent decision process. The financial wherewithal of the merged entity and management “resolve” to allocate funds to complete our buildout in a timely fashion were by no means assured by any statement made by ATTC proponents at the Hearing or otherwise provided in writing in the Form 396 and subsequent response documents. CAC member Ken Woods pointed out this troubling lack of assurance in his heated comments, amplified by others present at the Hearing. Later in the Hearing, Westford resident Bill Koester made an impassioned plea that a high-ranking Comcast executive personally address the Westford BoS and CAC to provide “believable” assurances regarding Westford’s buildout schedule. He made the point that a reasonable capital expenditure plan and a demonstration of management support to implement it were necessary indicators of suitability to meet the Transfer criteria. For their part, ATTC’s proponents argued that these assurances were “out of scope” of the Transfer Consent process, especially since the buildout is not a current License obligation, and that no Comcast executive would address the BoS in this regard.

- Effect of ongoing Breach Process** – As discussed at the Hearing, the Town of Westford has initiated the formal Breach Process as a result of last year's Performance Evaluation Hearing. To this end, the BoS has sent official Breach Notice letters to ATTb concerning defaults re: Sec. 12.2, 12.9, 13.4 and 13.9 of the Renewal License and has since received replies from Rob Travers. Breach Hearings will be scheduled by the Issuing Authority as required to further address these defaults with the Licensee. These alleged License compliance shortfalls reflect poorly on the ability of the current Licensee to perform adequately as the Renewal License Licensee, particularly in the areas of Customer Service and TV Signal Quality. The same can be said of the Transferee, since we have been assured that local management will remain in charge after the Change of Control. As has been argued successfully by the City of Cambridge in their prior License Transfer Denial Appeal (DTE Docket No. CTV99-4), lack of management "expertise" implied by inadequate License compliance casts aspersions on the management "experience" of the Transferee. ATTC's management experience is likewise called into question in the context of the present Change of Control deliberations.
- Financial Statements of Transferee** – Selectman Jefferies made specific inquiry regarding the accounting basis for the financial disclosures included in the Form 394 Application. The Pro Forma Financial Statements for ATTC included in Exhibit 9 (prepared jointly by ATTb and Comcast) were stated to have been unaudited, raising concern about their veracity, and hence adding an element of doubt in assessing the financial capability of the new company, particularly given the fact that AT&T Comcast, for all intent and purposes, does not exist. To this end, it can provide no history to support its claim of financial capability. Related questions regarding which accounting firm(s) audited the Form 10-K and Form 10-Q financial statements for ATTb and Comcast respectively were later answered in writing.

C. Additional Comments by Townspeople

Concerned citizens sent several relevant email messages to the Westford CAC in association with the Hearing proceedings. These are identified and excerpted as follows:

- [Tony Vacca, 93 Main ST, dated 4/9/02 – Sent in lieu of attendance at Hearing]

"Since ATT clearly and publicly mislead (sic) us on the build out issue during the previous license transfer, I believe that they should not be granted this one on the grounds that their management has forsaken its credibility and/or their finances have fallen short of their ability to provide the overdue buildout essential for the needs of this town."
- [Tony Vacca, 93 Main ST, dated 4/11/02 – Intended for inclusion in Proceedings]

"I hope that the Selectmen wait until the last minute to deny the application based upon the Chairman's observations and their demonstrated lack of ability to properly manage, service or finance Cable in the Westford area. This objection can only go away if the new company has NO one from ATT in its management."

- [Paul Alphen, 9 Boutwell Hill RD, dated 4/23/02 – Intended for inclusion in Proceedings]

“We support your challenge of the proposed transfer of the license. As I understand it, over 75% of the nation has high speed internet...but not Westford. As parents of a High School Junior we are handicapped in our ability to research colleges and admissions related information. The colleges, the testing organizations and other entities assume students and parents have high speed internet. It takes hours to review admissions information on line on one college using our dial up modem, and we haven't tried to download forms and other literature. Meanwhile, students in other Towns can zip through the web sites.”

CONCLUSIONS

The following conclusions relative to the explicit Transfer Consent criteria are based on the Hearing proceedings, as summarized in the preceding discussion:

- **Financial Capability – Insufficiently demonstrated** on the basis of: unaudited Pro Forma Financial Statements; the inability and/or unwillingness of the Transferee to make a financial commitment to the Broadband buildout of Westford's cable infrastructure; and, the fact that the Transferee will be a new company that cannot document any financial capability, etc.
- **Management Experience – Insufficiently demonstrated** on the basis of: uncertainty in the makeup of ATTC's Board of Directors; lack of confidence in the local management team (retained after the Transfer), especially with regard to inadequate compliance with FCC Customer Service and Signal Quality requirements; and, the inability and/or unwillingness of the Transferee to adequately plan for and make a management commitment to the Broadband buildout of Westford's cable infrastructure.
- **Technical Expertise – Insufficiently demonstrated** on the basis of: the lack of deployment to date of broadband cable technology in Westford, which could mitigate poor and inadequate Signal Quality and other technical problems with the current cable system – to be ostensibly maintained by the same personnel after the Transfer.
- **Legal Ability – Insufficiently demonstrated** on the basis of: lack of FTC approval to date for the merger; and, inability of the current Licensee to comply with the Westford Renewal License (now in Breach) – municipal liaison ostensibly to be undertaken by the same personnel after the Transfer.

OPTIONS FOR OFFICIAL RESPONSE

The following Table describes the range of official responses to the Change of Control request pursuant to applicable regulations and statutes:

Basic Response	Action Taken	Essential Effect of Response	Notes
Approval	None	Westford franchise transferred to ATTC after new company begins operations.	Holding a Transfer Hearing precludes this response.
Approval	Letter to DTE Cable Division	Westford franchise transferred to ATTC after new company begins operations.	Approval letter can raise objections, but make no “conditions” for approval.
Denial	Letter to DTE Cable Division – Minimal Follow-up	Denial certain to be challenged by ATTB appeal to the DTE Cable Division. May well be overturned by the Cable Division – franchise will be transferred, unless further appeal by the Town prevails.	Makes a political statement. Defense not mounted once Appeal is filed. Can save legal expenses, but undermines perceived resolve of BoS.
Denial	Letter to DTE Cable Division – Maximal Follow-up	Denial certain to be challenged by ATTB appeal to the DTE Cable Division. May well be overturned by the Cable Division – franchise will be transferred, unless further appeal by the Town prevails.	Makes a stronger political statement. Defense strongly mounted after Appeal is filed. Can result in legal expenses of ~\$2K or more, but enhances perceived resolve of BoS.

CAC RECOMMENDATIONS

With all members in attendance, the Westford Cable Advisory Committee extensively discussed the proceedings of the Transfer Hearing and the issues surrounding the Transfer Consent decision at the 5/30/02 Meeting. Rob Travers from ATTB was also present to participate in the discussion.

Following extensive debate, two official votes were taken at the CAC Meeting, as follows:

1. *The CAC recommends that the BoS officially deny the Change of Control of Westford's cable franchise* [passed by majority vote].
2. *The CAC recommends that the BoS endeavor to defend the Denial decision under Appeal to the maximum extent possible* [passed by unanimous vote].

ADDITIONAL GUIDANCE

The following additional information may help the BoS in their deliberations regarding the Transfer decision, officially due by 6/30/02:

- The additional legal expenses that are expected to be incurred when mounting an “all-out” Appeal Defense to a Denial action have been estimated (by Special Counsel Peter Epstein) not to exceed \$2K, unless subsequent appeals go to a court of law.
- This year alone, the 50-cents per subscriber Annual Franchise Fee provided to the Town Treasury by ATTb more than offsets these legal expenses, as well as the fees already billable as a result of Atty. Epstein’s participation so far in the Transfer process. Franchise Fees paid in prior years could subsidize the legal expenses for court appeals.
- Regional coordination between Cable Advisory Committees has been taking place over the past year, since the Westford CAC invited the Chairs of other CACs to participate in Westford’s Performance Evaluation Hearing on 7/24/01. This coordination, by email and occasional face-to-face meetings, has been facilitated by the Cable Committee Consortium for Broadband (CCC_B) online forum, founded and moderated by Westford CAC Co-Chair Dave Levy.
- A number of Towns’ CACs have expressed interest in holding Regional Denial Appeal Hearings, on the basis of having common grounds for Denial. Sharing the same Special Counsel at such Hearings could save each participating Town money by dividing the legal expenses between multiple Towns. Atty. Epstein expects that the DTE Cable Division may itself favor consolidating these Hearings, though this is not in any way assured.
- As of this time, it appears that Acton, Townsend, Westwood, New Bedford, Belmont, Cambridge, Stow and other MA municipalities are leaning towards Denial or have already committed to it. A number of other ATTb Towns in our region are “on the fence” waiting to see if a “critical mass” of Denials will entice them to follow suit.
- State Senator Pamela Resor convened a Regional meeting at Acton Town Hall on 6/2/02 to address concerns in constituent Towns regarding the License Transfer process and other cable-related issues. As a result, Sen. Resor is championing Budget Resolutions in the State House promoting Consumer Advocacy by calling for the DTE to be restructured as a branch of the Attorney General’s office, in addition to convening a fact-finding Commission intended to scrutinize anti-consumer bias in past precedents in DTE Cable Division rulings. The senator also wants each Town to have the option of joining forces with other Towns to consolidate Denial Appeal Hearings at their own discretion, rather than at the DTE’s convenience. Sen. Resor had meant to address these issues at the 6/10/02 MassBroadband Conference but was called away to the State House for critical votes at the last minute. CAC Co-Chair Dave Levy was present, and testified regarding these matters at the Conference. The CAC will apprise the BoS of further developments related to these initiatives.

Questions and concerns regarding this CAC Report (as well as requests for copies of the proceedings of the Hearing) may be directed to the author, Dave Levy, by email to: davelevy@prospeed.net, or by phone to (978) 692-2290.